IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7863 OF 2003

Vinayak Govind Atale,
Dy.Executive Engineer (Generation),
Nasik Thermal Power Station,
Nasik. .. Petitioner

v/s.

Chief Engineer,
Nasik Thermal Power Station,
Eklahare, Nasik & anr. .. Respondents

Mr.R.V.Pawaskar i/by Mr.S.M.Gorwadkar for petitioner.

Ms.A.R.S.Baxi for respondent Nos.1 and 2.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 1st April, 2005

P.C.

Heard Mr.R.V.Pawaskar, the learned counsel for the petitioner and Ms.A.R.S.Baxi, the learned counsel for the respondents.

2. On the promotion to the post of Assistant Superintendent or Deputy Executive Engineer in the year 1982, the petitioner was given basic pay of Rs.1405/-. It was later on detected that petitioner was only entitled to the basic pay of Rs.1340/- only at that time. In view of the excess payment made, the respondents initiated action for recovery of the

excess amount of Rs.7867/-. The said action was challenged by the petitioner by filing writ petition being writ petition No.641 of 1990. The Division Bench of this court by the order dated 3rd December, 2002 held that before taking action for recovery of the alleged excess amount said to have been paid to the petitioner, the petitioner should have been granted an opportunity of being heard. Consequently, the Division Bench set aside the action of the respondents with liberty to them to take an appropriate action after granting opportunity to the petitioner to show cause.

3. In the light of the order passed by this court dated 3.12.2002, show-cause notice was issued to the petitioner as to why an amount of Rs.7867/- which was excessively paid to the petitioner because of wrong fixation of basic pay should not be recovered. Shri G.M.Chavan was appointed as enquiry officer. On 2.8.2003, the petitioner was informed that hearing in the matter will take place on 18.8.2003. On 18.8.2003, the petitioner appeared before the enquiry officer and raised objections. After considering the petitioner's objections, the petitioner was sent the details of the pay fixation to which the petitioner was entitled on 1.4.1982 on his promotion. In the communication the petitioner

was informed that if he so wanted he could have his say about the communication dated 10.9.2003. In the backdrop of the communication sent to the petitioner on 10.9.2003 for further consideration of the matter, the meeting was kept on 15.9.2003 by the enquiry officer. On 15.9.2003, the petitioner did not cooperate with the enquiry officer and nothing further was shown as to why the details of pay fixation sent to him was wrong. As a result of which, the order dated 15.9.2003 came to be passed.

4. Having considered the facts and circumstances of the case, we find that pursuant to the order dated 3.12.2002 sufficient opportunity was given to the petitioner. The order dated 15.9.2003 cannot be said to suffer from legal infirmity.

5. Writ petition is dismissed in limine.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)